

# SHORELAND ZONING ORDINANCE

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**TOWN OF OWLS HEAD**

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Adopted - December 5, 1991  
Amended - October 27, 1993  
Amended - August 28, 1995  
Amended - November 20, 1995  
Amended - September 8, 1997  
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## **Section 1. Purposes**

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect coastal and freshwater wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

## **Section 2. Authority**

This Ordinance has been prepared in accordance with the provisions of Title 38 Sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

## **Section 3. Applicability**

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any saltwater body; within 250 feet, horizontal distance, of the upland edge of coastal and freshwater wetlands; and within 75 feet, horizontal distance, of the normal high-water line of a stream.

## **Section 4. Effective Date and Repeal of Formerly Adopted Ordinance**

This Ordinance, which was adopted by the municipal legislative body on December 5, 1991, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, attested and signed by the Town Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance within forty-five (45) days of its receipt of the Ordinance, it shall be deemed approved. Upon approval of this Ordinance, the Shoreland Zoning Ordinance previously adopted on December 17, 1979 is hereby repealed.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, if the Ordinance is approved by the Commissioner of the Department of Environmental Protection.

## **Section 5. Availability**

A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

## **Section 6. Severability**

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

## **Section 7. Conflicts with Other Ordinances**

Whenever the requirements of any other lawfully adopted rules, regulations, ordinances, are in conflict with this Ordinance, the most restrictive or that imposing the higher standard shall govern.

## **Section 8. Amendments**

This Ordinance may be amended in part or in whole by majority vote of the citizens of the Town at a regular or special Town meeting. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner following adoption by the Town and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of the receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

## **Section 9. Districts and Zoning Map**

### **A. Official Shoreland Zoning Map**

The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map which is made a part of this Ordinance:

1. Resource Protection
2. Rural Residential
3. Commercial
4. Commercial Fisheries/Maritime Activities

Note: The Shoreland Zoning Map may be amended by the Town of Owls Head from time to time.

### **B. Scale of Map**

The Official Shoreland Zoning Map shall be drawn at a scale of: 1 inch = 1000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

### **C. Certification of Official Shoreland Zoning Map**

The Official Shoreland Zoning Map shall be certified by the attested signature of the Town Clerk and shall be located in the Town Office, and a copy deposited with the Code Enforcement Officer.

### **D. Changes to the Official Shoreland Zoning Map**

If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

## **Section 10. Interpretation of District Boundaries**

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. The depiction of the Shoreland Districts on the Shoreland Zoning Map for the Town of Owls Head are merely illustrative of their general location. The boundaries of these districts shall be determined by measurement of the distance indicated on the maps from the normal high-water line of the water body or from the upland edge of wetland vegetation, regardless of the location of the boundary shown on the map. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

## **Section 11. Land Use Requirements**

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

## **Section 12. Non-conformance**

### **A. Purpose**

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance shall be allowed to continue, subject to the requirements set forth in this section.

### **B. General**

1. Transfer of Ownership: Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
2. Repair and Maintenance: This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

### **C. Non-conforming Structures**

1. Expansions: A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure, and is in accordance with subparagraphs a. and b. below.
  - a. Legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Ordinance are met.

- i. Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.
    - ii. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.
    - iii. For structures located less than 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland, the maximum combined floor area for all structures is 1,000 square feet, and the maximum height of any structure is 20 feet or the height of the existing structure, whichever is greater.
    - iv. For the purposes of subparagraph a., a basement is not counted toward floor area.
  - b. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 12 (C)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
  - c. No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.
2. Relocation: A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee, shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
3. Reconstruction or Replacement: Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12 (C) (1) above as determined by the non conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the reconstructed or relocated shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12 (C) (2) above.

Any non-conforming structure which is damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit, from the Code Enforcement Officer.



In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the Planning Board or its designee, shall consider in addition to the criteria in paragraph 2 above, the physical condition and type of foundation present, if any.

4. Change of Use of a Non-Conforming Structure

The use of a non-conforming structure may not be changed to another use unless the Planning Board after receiving a written application determines that the new use will have no greater adverse impact on the water body, tributary stream or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

D. Non-conforming Uses

1. Expansions: Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as permitted in Section 12.C.1.a. above.
2. Resumption Prohibited: A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
3. Change of Use: An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water-dependent uses in the CFMA Zone, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12.C.4. above.

E. Non-conforming Lots

1. Non-conforming Lots: A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, width, and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width, or shore frontage shall be obtained by action of the Board of Appeals.

2. **Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

3. **Contiguous Lots - Vacant or Partially Built:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

### **Section 13. Establishment of Districts**

#### **A. Resource Protection District**

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the Shoreland Zone, except those areas which are currently developed and areas which meet the criteria for the Commercial or Commercial Fisheries/Maritime Activities Zones need not be included within the Resource Protection District:

- 1(a). Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows which are rated “moderate” or “high” value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May1, 2006. For the purposes of this paragraph “wetlands associated with great pond and rivers” shall mean areas characterized by non forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. “Wetlands associated with great ponds or rivers” are considered to be part of that great pond or river.

**NOTE:** The Natural Resources Protection Act, Title 38 Sections 480-A thru 480-Z, requires the Department of Environmental Protection to designate areas of “significant wildlife habitat.”. Significant wildlife habitat includes:

Habitat for species appearing on the official state or federal lists of endangered or threatened species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries

and Wildlife; high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife; Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; and shorebird nesting, feeding and staging areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife.

- 1(b). The Resource Protection District also includes the area contained within all freshwater wetlands as delineated on the Shoreland Zoning Map.
2. This district shall include the 100-year flood plains adjacent to tidal waters as shown on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, excluding those areas which are densely developed as defined in Section 17.
3. Areas of two (2) or more contiguous acres with sustained slopes of 20% or greater.
4. Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during normal spring high water.
5. Land areas adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.
6. The following areas are included in the Resource Protection District within the Shoreland Zone:
  - a. Where Broad Brook enters Broad Cove for the first seventy five (75) feet upstream from the high water mark. The remainder will be measured from the top of the embankments;
  - b. Deep Cove, commencing at the Bankcroft School line, in an Easterly direction to the outcroppings of ledges, with a distance of seventy-five (75) feet from the normal high water line;
  - c. Monroe Island, east side from light south only one-quarter mile, approximately one-hundred (100) feet from the normal high water line or as determined by the Board of Appeals;
  - d. All lands two-hundred and fifty (250) feet from the normal high water line on Ash and Spaulding Islands. All lands one-hundred (100) feet from the normal high water line on Sheep Island; and,
  - e. All lands on Little and Emery Islands.
7. The following areas are designated as Resource Protection Districts in the Shoreland Zone as defined, and also extend beyond the Shoreland Zone as delineated on the Owls Head Zoning Map:
  - a. All properties contained in the boundaries of Map 11, Lots 56 and 27 (Lighthouse Park);

- b. All lands in Birch Point State Park, Map 1, Lots 39, 40 and 41;
- c. All lands in the State Wildlife and Game Preserve (Waldo Tyler Preserve), Map 15, Lots 1, 2 and 3.

Notwithstanding any wording to the contrary within this ordinance, the designation *Resource Protection District* is removed from all of Owls Head with the exception of:

All areas within the Shoreland Zone that are designated *Resource Protection District* on "Map 7 Shoreland Zoning" or in the text of the Shoreland Zoning Ordinance.

All areas within the Knox County Regional Airport and the Owls Head Transportation Museum that are designated *Resource Protection District* on "Map 7 Shoreland Zoning" or in the text of the Shoreland Ordinance.

**B. Rural Residential District**

The Rural Residential District, which makes up most of Owls Head that is within the 250 foot Shoreland Zone, is devoted, but not limited to, single- and two-family dwellings, agriculture, mobile home parks, schools, churches and convalescent homes. This district also includes the area within 75 feet, horizontal distance of a stream.

**C. Commercial District**

The Commercial District includes areas of mixed, light commercial and residential uses. Industrial uses are prohibited.

The Commercial District includes the following areas as delineated on the Shoreland Zoning Map; the portion of Map 4, Lot 56 (land on which bait house is located); Map 4, Lot 95; and Map 7, Lot 6; the portion of the Shoreland Zone located West of the corner of South Shore Drive and Ash Point Drive at Knox County Regional Airport as depicted on the Official Shoreland Zoning Map.

**D. Commercial Fisheries/Maritime Activities District**

The Commercial Fisheries/Maritime Activities District includes areas where the predominant existing pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, Section 14, and other areas which are suitable for functionally water-dependent uses. This district consists of Lots 21, 22, 23, 43 and a 100-ft. x 300-ft portion of Lot 42 adjacent to the lobster pound as shown on Map 11, Property Tax Map, Town of Owls Head.

**Section 14. Table of Land Uses**

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Key to Table 1:

RP - Resource Protection

RR - Rural Residential

C - Commercial

CFMA - Commercial Fisheries/Maritime Activities

Y - Allowed (no permit required but the use must comply with all applicable land use standards)

N - Prohibited

PB - Requires permit issued by the Planning Board

CEO - Requires permit issued by the Code Enforcement Officer

LPI - Requires permit issued by the Local Plumbing Inspector

NOTE: Certain development activities proposed for the Shoreland Zone may also require a permit(s) from the Maine Department of Environmental Protection, the U.S. Army Corps of Engineers, or other state or federal agencies. Applicants should contact Maine DEP or the US Army Corps to determine if additional permits are necessary.

A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to Title 38 M.R.S.A., Section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or,
- D. Any construction or alteration of any permanent structure.

<b>Table 1. Land Uses in the Shoreland Zone</b>	<b>Districts</b>			
	<b>RP</b>	<b>RR</b>	<b>C</b>	<b>CFM A</b>
1. Non-intensive recreational uses not requiring structure, such as hunting, fishing & hiking	Y	Y	Y	Y
2. Motorized vehicular traffic on existing roads & trails, snowmobiling	Y	Y	Y	Y
3. Forest management activities except timber harvesting	Y	Y	Y	Y
4. Timber harvesting*	CEO	Y	Y	Y
5. Clearing of vegetation for approved construction & other allowed uses	CEO	Y	Y	Y
6. Fire prevention activities	Y	Y	Y	Y
7. Wildlife management practices	Y	Y	Y	
8. Soil & water conservation practices	Y	Y	Y	Y
9. Mineral exploration	N	N	PB	PB
10. Mineral extraction including sand/gravel extraction	N	N	PB	PB
11. Surveying & resource analysis	Y	Y	Y	Y
12. Emergency operations as defined in Section 17	Y	Y	Y	Y
13. Agriculture*	PB	Y	Y	Y
14. Aquaculture*	PB	PB	Y	Y
15. Principle structures, uses & activities				
a. One & two-family residential	PB <sup>6</sup>	CEO	CEO	N
b. Multi-unit residential	N	N	N	N
c. Commercial	N	N	PB	PB <sup>1</sup>
d. Industrial	N	N	N	PB <sup>1</sup>
e. Governmental & institutional	N	N	PB	PB <sup>1</sup>
f. Small nonresidential facilities for educational scientific or nature interpretation purposes	PB	PB	PB	PB <sup>1</sup>
g. Projects that provide for the safety of airport operations	Y	Y	Y	N
16. Structures accessory to allowed uses	PB	CEO	CEO	CEO
17. Piers, docks, wharves, bridges & other structures & uses extending over or below the normal high water line or within a wetland				
a. Temporary	CEO	CEO	CEO	CEO
b. Permanent	PB	PB	PB	PB <sup>1</sup>
18. Conversions of seasonal residences to rear-round residences	LPI & CEO <sup>5</sup>	LPI/CEO	LPI/CEO	N
19. Home occupations	N	CEO	CEO	CEO
20. Private sewage disposal systems for allowed uses	PB/LPI <sup>6</sup>	LPI	LPI	LPI
21. Essential services	PB <sup>2</sup>	CEO	PB	PB
22. Public & private recreational facilities involving minimal structural development	PB	PB	PB	CEO <sup>1</sup>
23. Individual private campsites	CEO	CEO	CEO	CEO
24. Campgrounds	N <sup>3</sup>	N	PB	N
25. Road & driveway construction	N <sup>4</sup>	CEO	PB	PB <sup>1</sup>
26. Parking facilities	N <sup>3</sup>	PB	PB	PB <sup>1</sup>
27. Marinas	N	N	N	PB
28. Service drops as defined to allowed uses	Y	Y	Y	Y
29. Lodging facilities including Bed & Breakfast	N	PB	PB	N
30. Hotels, motels	N	N	PB	N
31. Filling & earthmoving of less than 10 cubic yds.	CEO	Y	Y	Y
32. Filling & earthmoving of more than 10 cubic yds.	PB	CEO	CEO	CEO
33. Cemeteries **	N	PB	N	N
34. Septage Waste Disposal	N	N	N	N

Table 1. (Cont.)

NOTES:

1. Functionally water-dependent uses and uses accessory to such water – dependent uses only.
2. See further restrictions in Section 15., K., Land Use Standards – Essential Services.
3. Except when area is districted for RP due to flood plain criteria, in which case a Planning Board permit is required.
4. Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the Resource Protection, in which case a Planning Board permit is required.
5. Along tidal waters only, and upon proof of adequate sewage disposal capacity to accommodate year-round residential use. Expansion of structure is prohibited.
6. See Section 16, E. Special Exceptions
- \* Subject to specific land use standards, Section 15.

The footnote indicated by the double asterisk (\*\*) to read: "No cemetery can be located, wholly or in part, within 75-feet, horizontal distance, of the upland edge of coastal and freshwater wetlands as identified by the U.S. Fish & Wildlife National Wetland Inventory and Maine Geologic Survey, nor within 75-feet, horizontal distance, of the normal high-water line of a stream."

## **Section 15. Land Use Standards**

All land use activities within the Shoreland Zone shall conform with the following provisions, if applicable.

### **A. Minimum Lot Standards**

	<b>Minimum Lot Area (sq.ft)</b>	<b>Min. Shore Frontage-ft</b>
<b>1. <u>Residential per dwelling unit</u></b>		
a. Within the Shoreland Zone adjacent to Tidal	40,000	150
b. Within the Shoreland Zone adjacent to Non-tidal areas	40,000	200
<b>2. <u>Governmental, Institutional or Commercial principal structure</u></b>		
a. Within the Shoreland Zone adjacent to Tidal areas exclusive of those districted for CFMA	40,000	200
b. Within the Shoreland Zone adjacent to Tidal areas districted for CFMA	NONE	NONE
c. Within the Shoreland Zone adjacent to Non-tidal areas	60,000	300
<b>3. <u>Public and Private Recreational Facilities</u></b>		
a. Within the Shoreland Zone adjacent to Tidal and Non-tidal areas	40,000	200
4. Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.		
5. Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.		
6. The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.		
7. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.		



**B. Principal and Accessory Structures**

1. All new principal and accessory structures shall be set back at least seventy-five (75) feet from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland, except that in the Commercial Fisheries/Maritime Activities Zone there shall be no minimum setback. The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified shall apply.

**In Addition:**

- a. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff Maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal to the Board of Appeals.
  - b. On a non conforming lot of record on which a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structures shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetative clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.
2. Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Rural Residential, and Commercial Zones shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
  3. The lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils.

4. The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the Shoreland Zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed, except in the Commercial Fisheries/Maritime Activities Zone where lot coverage shall not exceed seventy (70) percent.
  5. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided; that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480-C; and that the applicant demonstrates that no reasonable access alternative exists on the property.
  6. Conversion of seasonal residences to year-round residences in a Resource Protection Zone along tidal waters may be permitted by the Plumbing Inspector upon proof that the sewage disposal system can accommodate year-round residential use. Expansion or enlargement of existing principal or accessory structures is prohibited.
- C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland.
1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
  2. The location shall not interfere with existing developed or natural beach areas.
  3. The facility shall be located so as to minimize adverse effects on fisheries.
  4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.
  5. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
  6. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any zone.
  7. Except in the Commercial Fisheries/Maritime Activities Zone, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

NOTE: Permanent structures projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38 MRSA, Sec.480-C.

**D. Campgrounds**

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

1. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of seventy-five (75) feet from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland .

**E. Individual Private Campsites**

Individual, private campsites not associated with campgrounds are permitted provided the following conditions are met:

1. One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the Shoreland Zone, whichever is less, may be permitted.
2. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back seventy-five (75) feet from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.
3. Recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure(s) except canopies shall be attached to the recreational vehicle.
4. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection Zone shall be limited to one-thousand (1000) square feet.
5. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site written authorization from the receiving facility or land owner is required.
6. When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules, unless served by public sewage facilities.

**F. Parking Areas**

1. Parking areas shall meet the shoreline setback requirements for structures for the district in which such areas are located, except that in the Commercial

Fisheries/Maritime Activities Zone parking areas shall be setback at least twenty-five (25) feet from the normal high-water line or the upland edge of a wetland. The setback requirement for parking areas serving public boat launching facilities in zones other than the Commercial Fisheries/Maritime Activities may be reduced to no less than fifty (50) feet from the normal high-water line or upland edge of a wetland, if the Planning Board finds that no other reasonable alternative exists.

2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent storm-water runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site.
3. In determining the appropriate size of proposed parking facilities, the following shall apply:
  - a. Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
  - b. Internal travel aisles: Approximately twenty (20) feet wide.

#### G. Roads and Driveways

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

1. All portions of roads and driveways shall be set back at least seventy-five (75) feet from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet for each five (5) percent increase in slope above twenty (20) percent. This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline due to an operational necessity.

2. Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body, tributary stream, or wetland.
3. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon finding that no reasonable alternative route or location is available outside the district. When road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

4. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15 Q.
5. Road and driveway grades shall be no greater than ten (10) percent except for short segments of less than two hundred (200) feet.
6. In order to prevent road and driveway surface drainage from directly entering water bodies, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

- a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

Road Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten (10) percent or less.
  - c. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road or driveway.
  - d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
8. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control Installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

## H. Signs

The following provisions shall govern the use of signs in the Resource Protection, Rural Residential, Commercial Fisheries/Marine Activity, and Commercial Districts:

1. Signs and billboards relating to goods and services sold on the premises shall be permitted, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Commercial Fisheries/Marine Activity District, however, such signs shall not exceed sixteen (16) square feet in area. Billboards and signs relating to goods or services not sold or rendered on the premises shall be prohibited.
2. Name signs shall be permitted, provided such signs shall not exceed two (2) signs per premises and shall not exceed twelve (12) square feet in the aggregate. Name signs shall be permitted, provided such signs shall not exceed two (2) signs per premises.
3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
4. Signs relating to trespassing and hunting shall be permitted without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
5. Signs relating to public safety shall be permitted without restriction.
6. No sign shall extend higher than twenty (20) feet above the ground.
7. Signs may be illuminated only by shielded, non-flashing lights.

## I. Storm Water Runoff

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm waters.
2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

## J. Septic Waste Disposal

1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules (Rules).

NOTE: The Rules, among other requirements, include:

- a. The minimum setback for new subsurface sewage disposal systems, shall be no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. This setback includes clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions. The minimum setback distances from water bodies for new subsurface sewage disposal systems shall not be reduced by variance.
- b. Replacement systems shall meet the standards for replacement systems as contained in the Rules.

- c. A holding tank is not allowed for a first time residential use in the Shoreland Zone.

**K. Essential Services**

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. The installation of essential services is not permitted in a Resource Protection Zone except to provide services to a permitted use within said zone, or except where the applicant demonstrates that no reasonable alternative exists. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
3. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

**L. Mineral Exploration and Extraction**

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one-hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of paragraph 3 below.
2. Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A, Section 480-C no part of any extraction operation, including drainage and runoff control features shall be permitted within seventy-five (75) feet of the normal high-water line of any water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within seventy-five (75) feet of any property line, without written permission of the owner of such adjacent property.
3. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
  - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

NOTE: The State of Maine Solid Waste Laws, Title 38, Maine Revised Statutes Annotated, Section 1310 and Chapter 404 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

- b. The final graded slope shall be two to one (2:1) slope or flatter.
  - c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
4. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

**M. Agriculture**

- 1. All spreading or disposal of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209) and subsequent revisions thereof.
- 2. Manure shall not be stored or stockpiled within seventy-five (75) feet horizontal distance, of water bodies, tributary streams or wetlands. All manure storage areas within the Shoreland Zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- 3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the Shoreland Zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

NOTE: Assistance in preparing a soil and water conservation plan may be available through the Knox-Lincoln Soil and Water Conservation District office.

- 4. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, from water bodies; nor within twenty-five feet, horizontal distance, of tributary streams and wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- 5. Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance of water bodies, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.



N. Timber Harvesting

1. Timber harvesting shall conform with the following provisions:

- a. Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. Timber harvesting operations exceeding the 40% limitation as described in this paragraph may be allowed by the Planning Board upon clear showing, including a forest management plan signed by a licensed professional forester, that such an exception is necessary for good forest management, and is carried out in accordance with the purposes of Shoreland Zoning.

The Planning Board shall notify the Commissioner of DEP of each exception allowed. In addition:

- i. Within seventy-five (75) feet, horizontal distance, of the normal high-water line of water bodies, tributary streams or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
  - ii. At distances greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet, they shall be at least one-hundred (100) feet apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.
- b. No accumulation of slash shall be left within fifty (50) feet of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
  - c. Timber harvesting equipment shall not use stream channels as travel routes except when:
    - i. Surface waters are frozen; and
    - ii. The activity will not result in any ground disturbance.
  - d. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
  - e. Skid trail approaches to 3 water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.

- f. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified filter strip of vegetation shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such mineral soil on a back face shall be closer than twenty-five (25) feet from the normal high-water line of a water body or upland edge of a wetland.

**O. Clearing or Removal of Vegetation for Activities Other than Timber Harvesting**

1. In any Resource Protection Zone, the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in that zone.
2. Except to allow for the development of permitted uses, within a strip of land extending seventy-five (75) feet, horizontal distance, from a water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
  - a. There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created.
  - b. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. For the purposes of this section a "well-distributed stand of trees" shall be determined by the following rating system.

<u>Diameter of Tree at 4-1/2 feet Above Ground Level (inches)</u>	<u>Points</u>
2 - <4 in.	1
4 - <8 in.	2
8 - <12 in	4
12 or greater	8

Adjacent to water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

NOTE: As an example, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, and three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50 foot plot contains trees worth 36 points. Trees totaling 20 points ( $36-20=16$ ) may be removed from the plot provided that no cleared openings are created.

The following shall govern in applying this point system:

- (i) The 25-foot x 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.
- (vi) For the purpose of 15 (O) (2) (b) “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half ( $4\frac{1}{2}$ ) feet above ground level for each 25-foot by 50-foot rectangular area. If five (5) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until five (5) saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at  $4\frac{1}{2}$  feet above ground level may be removed in any ten (10) year period.

- c. Pruning of tree branches, on the bottom  $\frac{1}{3}$  of the tree is permitted.
- d. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

The provisions contained in paragraph 2. above shall not apply to those portions of public recreational facilities adjacent to public swimming areas. Cleared areas, however, shall be limited to the minimum area necessary.

- 3. At distances greater than seventy-five (75) feet, horizontal distance, from the normal high-water line of any water body, tributary stream, or the upland edge of a wetland, except to allow for the development of permitted uses, there shall be permitted on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured  $4\frac{1}{2}$  feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, 25% of the lot area or ten-thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision shall not apply to the Commercial Fisheries/Maritime Activities District.

4. Cleared openings legally in existence on the effective date of this Ordinance may be maintained, but shall not be enlarged, except as permitted by this Ordinance.
5. Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15 (O).

**P. Erosion and Sedimentation Control**

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - a. Mulching and revegetation of disturbed soil.
  - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - c. Permanent stabilization structures such as retaining walls or riprap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
  - a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five-hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

**Q. Soils**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

**R. Water Quality**

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body.

**S. Archaeological Sites**

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

**Section 16. Administration**

**A. Creation of Administering Bodies and Agents**

**1. Code Enforcement Officer and Deputy Code Enforcement Officer**

A Code Enforcement Officer shall be appointed or reappointed annually.

A Deputy Code Enforcement Officer may be appointed or reappointed annually.

**2. Board of Appeals**

A Board of Appeals for the Town of Owls Head has been created pursuant to the provisions of State Law, Title 30-A Section 2691.

**3. Planning Board**

A Planning Board has been created in accordance with the provisions of State law.

## **B. Permits Required**

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

1. A permit is not required for the replacement of an existing road culvert as long as:
  - a. The replacement culvert is not more than 25% longer than the culvert being replaced;
  - b. The replacement culvert is no longer than 75 feet; and
  - c. Adequate control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the water course.
2. A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
3. Any permit required by this Ordinance shall be in addition to any other permit(s) require by other law or ordinance.

## **C. Permit Application**

1. Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the Town, to the appropriate official as indicated in Section 14.
2. All applications shall be signed by the owner or owners of the property or other person authorizing work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property then that person shall submit a letter of authorization from the owner or lessee.
3. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
4. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure would require the installation of a subsurface sewage disposal system.

## **D. Procedures for Administering Permits**

Within thirty (30) days of the date of receiving a written application, the Planning Board, Code Enforcement Officer, or Local Plumbing Inspector as indicated in Section 14., shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the

application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within thirty (30) days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within thirty (30) days after the first available date on the Planning Board's agenda following receipt of the completed application, or within thirty (30) day of the public hearing, if one is held. Permits shall be approved if the proposed use is found to be in conformance with the provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Code Enforcement Officer or the Planning Board, as appropriate, the CEO or the Planning Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will protect archaeological and historic resources;
7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities zone;
8. Will avoid problems associated with flood plain development and use; and
9. Is in conformance with the provisions of Section 15., Land Use Standards.

Permits may be made subject to reasonable conditions to insure conformity with the purposes and provisions of this Ordinance. If a permit is denied, or approved with conditions, the reasons for denial as well as the conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any State law which the Town is responsible for enforcing.

#### **E. Special Exceptions**

In addition to the criteria specified in Section 16 (D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in the Resource Protection District provided that the applicant demonstrates that all the following conditions are met.

1. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

2. The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county of which the lot is located before the adoption of the Resource Protection District.
3. All proposed buildings, sewerage disposal systems and other improvements are:
  - a. located on natural ground slopes of less than 20%; and
  - b. located outside the floodway of the 100- year flood-plain along rivers and artificially formed great ponds and outside of the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundry and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements are elevated at least one foot above the 100-year flood plain elevation; and the development is otherwise in compliance with any applicable municipal ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be ½ the width of the 100-year flood plain.

4. The ground floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
5. All structures, except functionally water dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and the amount of vegetation to be removed, the proposed building site's elevation in regard to the flood plain, and its proximity to moderate-value and high value wetlands.

#### F. Expiration of Permits

Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within a year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

#### G. Installation of Public Utility Service

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the Shoreland Zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance, has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

#### H. Appeals

1. Powers and Duties of the Board of Appeals



The Board of Appeals shall have the following powers:

- a. Administrative Appeals: To hear and decide appeals on an appellate basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of this Ordinance.
- b. Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.
- c. In administering the review of an Administrative Appeal, (an appeal other than the review of a request for a variance), the Board of Appeals shall be governed by the provisions of Article 1., General, Section 1.6 Board of Appeals, of the Zoning Ordinance of the Town of Owls Head. However, whenever there is found to be a conflict between the requirements of the Zoning Ordinance and the Shoreland Zoning Ordinance, the more severe requirement as judged to be against the interest of the appellant shall apply.
- d. The Board of Appeals shall hear matters on an appellate basis. The Board of Appeals may reverse the decision of the Code Enforcement Officer or Planning Board only upon a finding that the decision was clearly contrary to specific provisions of this ordinance.

## 2. Variance Appeals

Variances may be permitted only under the following conditions:

- a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- b. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- c. In the Shoreland Zone, a copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.
- d. The Board shall not grant a variance unless it finds that:
  - i. The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and
  - ii. The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
    1. That the land in question cannot yield a reasonable return unless a variance is granted;
    2. That the need for a variance is due to the unique circumstances

of the property and not to the general conditions in the neighborhood;

3. That the granting of a variance will not alter the essential character of the locality; and
  4. That the hardship is not the result of action taken by the applicant or a prior owner.
- e. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
  - f. A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within seven (7) days of the decision.

### 3. Appeal Procedure

#### a. Making an Appeal

- i. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. Such appeal shall be taken within thirty (30) days of the date of the decision showing of good cause, may waive the thirty (30) day requirement.
- ii. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
  1. A concise written statement indicating what relief is requested and why it should be granted.
  2. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- iii. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- iv. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

#### b. Decision by Board of Appeals

- i. A majority of the board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
- ii. The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement

Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide under this Ordinance, or to affect any variation in the application of this Ordinance from its stated terms. The board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.

- iii. The person filing the appeal shall have the burden of proof.
- iv. The Board shall decide all appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
- v. All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, and the appropriate order, relief or denial thereof.

#### 4. Appeal to Superior Court

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty five (45) days from the date of any decision of the Board of Appeals.

#### 5. Reconsideration

In accordance with 30-A M.R.S.A. section 2691 (3) (F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) day of the decision that is being reconsidered. A vote to reconsider and the action taken on the reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a

positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

### I. Enforcement

#### 1. Nuisances

Any violation of this Ordinance shall be deemed to be a nuisance.

#### 2. Code Enforcement-Officer

- a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of

the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal or discontinuance of the illegal use of land, buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

- b. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
- c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

### 3. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Town Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Owls Head. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

### 4. Fines

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of the Ordinance shall be penalized in accordance with 30-A, M.R.S.A. Section 4452.

Note: Current penalties include fines of not less than \$100 nor more than \$2,500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5,000 (38 M.R.S.A. Section 4452).

## **Section 17. Definitions**

**Accessory Structure or Use:** a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

**Agriculture:** the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grain and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.

**Aggrieved Party:** an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

**Aquaculture:** the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**Basal Area:** the area of cross-section of a tree stem at 4 ½ feet above ground level and inclusive of bark.

**Basement:** any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

**Bed & Breakfast:** a single-family, owner-occupied dwelling in which lodging or lodging and meals are provided to overnight guests for a fee, and which consists of no more than three (3) bedrooms for lodging purposes.

**Boat Launching Facility:** a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

**Campground:** any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

**Canopy:** the more or less continuous cover formed by the tree crowns in a wooded area.

**Coastal Wetland:** all tidal and sub-tidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Commercial Use:** the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

**Commercial Fishing Activities:** activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing, such as

the manufacture or sale of ice, bait and nets, and the sale, manufacture, installation or repair of boats, engines and other equipment commonly used on boats.

**Densely Developed:** any commercial, industrial or compact residential area of 10 or more acres with a density of at least one principal structure per two (2) acres.

**Dimensional Requirements:** numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

**Driveway:** a vehicular access-way less than five-hundred (500) feet in length serving two lots or less.

**Emergency Operations:** operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Essential Services:** the construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Expansion of a Structure:** an increase in the floor area or volume of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

**Expansion of Use:** the addition of weeks or months to a use's operating season; additional hours of operation; or the use of more floor area or ground area devoted to a particular use.

**Family:** one or more persons occupying a premises and living as a single housekeeping unit.

**Floor Area:** the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

**Forest Management Activities:** timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

**Forested Wetland:** a freshwater wetland dominated by live woody vegetation that is six (6) meters tall (approximately 20 feet) or more.

**Foundation:** the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

**Freshwater Wetlands:** freshwater swamps, marshes, bogs and similar areas other than forested wetlands which are:

- A. of ten (10) or more contiguous acres; or of less than ten (10) contiguous acres adjacent to a surface water body, excluding any stream or brook such that in a natural state, the combined surface area is in excess of 10 acres; and
- B. inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**Functionally Water-Dependent Uses:** those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

**Ground Cover:** small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**Height of a Structure:** the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

**Home Occupation:** an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

**Increase in Nonconformity of a Structure:** any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies. Wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body or wetland than the closest portion of the existing structure from that water body or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

**Individual Private Campsite:** an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

**Industrial:** the assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

**Lot Area:** the area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

**Marina:** a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities.

**Maritime Activities:** the construction, repair, storage, loading and unloading of boats, chandlery and other commercial activities designed and intended to facilitate maritime trade.

**Market Value:** the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Minimum Lot Width:** the closest distance between the side lot lines of a lot. When only two lot lines extend into the Shoreland Zone, both lot lines shall be considered to be side lot lines.

**Mineral Exploration:** hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral Extraction:** any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Multi-Unit Residential:** a residential structure containing three (3) or more residential dwelling units.

**Non-Conforming Lot:** a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the minimum lot area, lot frontage, or lot width requirements of the district in which it is located.

**Non-Conforming Structure:** a structure which does not meet anyone or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Non-Conforming Use:** use of buildings, structures, premises, land or parts thereof which is not permitted in the district in which is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Normal High-Water Line (Non-Tidal Waters):** that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands, the normal high-water line is the upland edge of the wetland and not the edge of the open water.



**Normal High-Water Line (Tidal Waters):** all tidal and sub-tidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Person:** an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

**Piers, docks, wharfs, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland:**

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

**Principal Structure:** a building in which is conducted the primary or principal use of the lot on which it is located.

**Principal Use:** the primary or predominant use of any lot.

**Public Facility:** any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

**Recreational Facility:** a place designed and equipped for the conduct of sports, leisure time activities and other customary and usual recreational activities, excluding boat launching facilities.

**Recreational Vehicle:** a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**Replacement System:** a system intended to replace: 1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2) any existing over board wastewater discharge.

**Residential Dwelling Unit:** a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

**Riprap:** rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

**River:** a free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

**Road:** a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

**Salt Marsh:** Areas along coastal waters (most often along coastal bays) which support salt tolerant species, and where at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). Open areas support widgeon grass, eelgrass, and Sago pondweed.

**Salt Meadow:** Areas which support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

**Service Drop:** any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. in the case of electric service
  - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
  - b. the total length of the extension is less than one thousand (1,000) feet.
2. in the case of telephone service
  - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
  - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback:** the nearest horizontal distance from the normal high-water line or the upland edge of a wetland to the nearest part of a structure, road, parking space or other regulated object or area.

**Shore Frontage:** the length of a lot bordering on a water body measured in a straight line between the intersections of the lot lines with the shoreline.

**Shoreland Zone:** the land area located within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any water body; within 250 feet of the upland edge of a coastal or freshwater wetland; or within seventy-five (75) feet of the normal high-water line of a stream.

**Shoreline:** the normal high-water line, or upland edge of a freshwater or coastal wetland.

**Stream:** a free-flowing body of water from the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river.

**Structure:** anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes.

**Substantial Start:** completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

**Subsurface Sewage Disposal System:** a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 MRSA Section 414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

**Sustained Slope:** a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Tidal Waters:** all waters affected by tidal action during the maximum spring tide.

**Timber Harvesting:** the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the Shoreland Zone on a lot that has less than two (2) acres within the Shoreland Zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (O), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

**Tourist Home:** an establishment in a private dwelling that provides temporary accommodations to overnight guests for a fee.

**Tributary Stream:** a channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland.

**Upland Edge of a Wetland:** the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is a line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

**Vegetation:** all live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

**Volume of a Structure:** the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof

**Water Body:** any great pond, river, stream or tidal area.

**Water Crossing:** any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings.

**Wetland:** a fresh water or coastal wetland.

**Section 18. Certification of Adoption**

We hereby attest that this is a true copy of the SHORELAND ZONING ORDINANCE of the Town of Owls Head, Maine, duly adopted at a Special Town Meeting held on December 5, 1991 and amended at Town Meetings held on:

Amended - October 27, 1993  
Amended - August 28, 1995  
Amended - November 20, 1995  
Amended - September 8, 1997  
Amended - November 22, 1999  
Amended - August 26, 2002  
Amended – April 7, 2008  
Amended - June 1, 2009

Selectmen: R. D. U.  
Nancy Colson  
Linda Post

Attest to: Brian Stevenson  
Town Clerk

Date: 6/07/10



